

REMARKS

Claims 1-30 and 32 remain in the application. Claims 1 and 32 have been amended. Claims 31 and 33 have been cancelled.

Claims 1-4, 6-14, and 19-30 stand rejected under 35 U.S.C. §102(b) by Garguillo et al. (U.S. Patent No. 5,418,983 – hereinafter referred to as Garguillo). While Applicant respectfully disagrees that Garguillo anticipates claims 1-4, 6-14, and 19-30 as set forth in Applicant's Amendment "C", Applicant nevertheless has cancelled claim 31 and incorporated the limitation contained therein into claim 1 in order to include in claim 1 additional important features of the invention. Applicant therefore respectfully submits the rejection of claims 1-4, 6-14, and 19-30 under 35 U.S.C. §102(b) by Garguillo is now moot.

Claims 1, 2, 5, 7-14, 19-21, and 23-30 stand rejected under 35 U.S.C. §102(b) by Peterson et al. (U.S. Patent No. 6,067,669 – hereinafter referred to as Peterson). While Applicant respectfully disagrees that Peterson anticipates claims 1, 2, 5, 7-14, 19-21, and 23-30 as set forth in Applicant's Amendment "C", Applicant nevertheless has cancelled claim 31 and incorporated the limitation contained therein into claim 1 in order to include in claim 1 additional important features of the invention. Applicant therefore respectfully submits the rejection of claims 1, 2, 5, 7-14, 19-21, and 23-30 under 35 U.S.C. §102(b) by Peterson is now moot.

Claims 15-18 and 31-33 stand rejected under 35 U.S.C. §103(a) by Garguillo or Peterson in view of Downey et al. (U.S. Patent No. 3,428,295 – hereinafter referred to as Downey).

Applicant respectfully traverses the rejection of claims 15-18, claim 31, now claim 1 as amended, and claims 32 and 33, now claim 32 as amended, over the combination of Garguillo in view of Downey as suggested by the Examiner. The Examiner asserts Downey discloses a push-activated valve that moves a seal member up and down to effectively seal a waste outlet. The

Examiner further asserts employing Downey involves merely using a known technique to improve a similar device. The Examiner accordingly alleges it would be obvious to one of ordinary skill in the art to employ the push-activated valve of Downey in place of the stem 72 of Garguillo because Garguillo and Downey are in the same field of endeavor. Essentially, the Examiner argues that Garguillo and Downey may be combined because Downey discloses that push-activated valves are known and both Garguillo and Downey are in the same field of endeavor.

Applicant respectfully contends the Examiner has not set forth a prima facie case that it would have been obvious to employ the push-activated valve of Downey in place of the stem 72 of Garguillo because the reason set forth by the Examiner – same field of endeavor – is not adequate to explain why it would have been obvious to one of ordinary skill in the art to combine Garguillo and Downey when such a combination requires rendering Garguillo's decorative color changeable basket sink strainer assembly unable to perform according to its intended purpose. Garguillo specifically recites in column 1, lines 30-35, "... for changing the décor, appearance or color of the drain body while at the same time allowing the use of "removable" basket sink strainers which have a ball stem holding." Garguillo accordingly specifically discloses that the sink strainer assembly uses a "removable" basket sink strainer in that the basket sink strainer is separable from the basket sink strainer assembly without disassembly. In contrast, the push-activated valve of Downey must be secured to a drain, and removing the push-activated valve of Downey requires a complicated disassembly process that involves multiple parts including push button 15, front housing part 20, mounting post 33, back housing part 36, indexing ring element 50, and springs 31 and 55. As such, substituting the push-activated valve of Downey for the stem 72 of Garguillo requires that the basket sink strainer be secured to the decorative insert such that

the basket sink strainer is not “removable” without disassembly. It is thus clear that substituting the push-activated valve of Downey for the stem 72 of Garguillo renders the basket sink strainer assembly incapable of satisfying a special feature of its design. It is impossible for the basket sink strainer to be “removable” because removal of the push-activated valve of Downey requires a complicated disassembly process that certainly does not satisfy the definition of “removable”. Applicant therefore respectfully submits that the reason for combination set forth by the Examiner – same field of endeavor – is insufficient to justify the combination because it does not adequately explain why Downey’s non-removable push-activated valve would be substituted for Garguillo’s removable stem 72 when such a substitution renders the Garguillo basket sink strainer assembly unsatisfactory for its intended purpose of being “removable”.

Applicant further respectfully contends the Examiner has not set forth a prima facie case that it would have been obvious to employ the push-activated valve of Downey in place of the stem 72 of Garguillo because the reason set forth by the Examiner – same field of endeavor – does not adequately explain why one of ordinary skill in the art would combine devices operating under different principles. Garguillo discloses pressing a stopper 78 until it seats within a decorative insert 14 and cannot be pressed any further in a downward direction. Once seated, the stopper 78 cannot be pressed further downwards and is removable only through pulling upwards. Moreover, the stopper 78 provides a seal that operates parallel relative to the decorative insert 14. In contrast, Downey operates through pressing the push-activated valve downwards to both close and open a drain. Downey also includes a gasket 16 that provides a seal that operates perpendicular relative to the drain. Applicant therefore respectfully submits that the mere fact Garguillo and Downey are in the same field of endeavor is not an apparent and adequate reason to justify the combination because it does not explain why it would be obvious to one of ordinary

skill in the art incorporate a push only device with a perpendicular seal into a push/pull device with a parallel seal.

Applicant accordingly respectfully submits claim 1 as amended, claims 15-18, and claim 32 as amended are patentable over the combination of Garguillo in view of Downey on the basis the Examiner has failed to set forth a prima facie case that the claims are obvious.

Applicant respectfully traverses the rejection of claims 15-18, claim 31, now claim 1 as amended, and claims 32 and 33, now claim 32 as amended, over the combination of Peterson in view of Downey as suggested by the Examiner. The Examiner asserts Downey discloses a push-activated valve that moves a seal member up and down to effectively seal a waste outlet. The Examiner further asserts employing Downey involves merely using a known technique to improve a similar device. The Examiner accordingly alleges it would be obvious to one of ordinary skill in the art to employ the push-activated valve of Downey in place of the rigid stem 16 of Peterson because Peterson and Downey are in the same field of endeavor. Essentially, the Examiner argues that Peterson and Downey may be combined because Downey discloses that push-activated valves are known and both Peterson and Downey are in the same field of endeavor.

Applicant respectfully contends the Examiner has not set forth a prima facie case that it would have been obvious to employ the push-activated valve of Downey in place of rigid stem 16 of Peterson because the reason set forth by the Examiner – same field of endeavor – is not adequate to explain why it would have been obvious to one of ordinary skill in the art to combine Peterson and Downey when such a combination requires rendering Peterson's strainer equipped drain plug assembly unable to perform according to its intended purpose. Peterson specifically recites in column 1, lines 42-44, "Other objects are to provide a strainer in the replacement drain

assembly that is easily removed and cleaned to remove trapped materials.” Peterson accordingly specifically discloses that the replacement drain assembly be “easily removable” for regular cleaning in that a simple unthreading of the rigid stem 16 releases the strainer 30. In contrast, the push-activated valve of Downey is not designed for “easy removal” for regular cleaning because any removal requires a complicated disassembly process involving multiple parts including push button 15, front housing part 20, mounting post 33, back housing part 36, indexing ring element 50, and springs 31 and 55. The push-activated valve of Downey was not designed for regular removal from a drain, and it is certainly not reasonable for the push-activated valve of Downey to be considered “easily removable”. As such, substituting the push-activated valve of Downey for the rigid stem 16 of Peterson requires that the strainer equipped drain plug assembly be secured to a drain such that the strainer equipped drain plug assembly is not “easily removable” for regular cleaning. It is thus clear that substituting the push-activated valve of Downey for the rigid 16 of Peterson renders the strainer equipped drain plug assembly incapable of satisfying a special feature of its design. It is impossible for the strainer equipped drain plug assembly to be “easily removable” for regular cleaning because removal of the push-activated valve of Downey requires a complicated disassembly process that certainly does not satisfy the definition of “easily removable”. Applicant therefore respectfully submits that the reason for combination set forth by the Examiner – same field of endeavor – is insufficient to justify the combination because it does not adequately explain why Downey’s non-removable push-activated valve would be substituted for Peterson’s rigid stem when such a substitution renders the Peterson basket sink strainer assembly unsatisfactory for its intended purpose of being “removable”.

Applicant further respectfully contends the Examiner has not set forth a prima facie case that it would have been obvious to employ the push-activated valve of Downey in place of the

rigid stem 16 of Peterson because the reason set forth by the Examiner – same field of endeavor – does not adequately explain why one of ordinary skill in the art would combine devices operating under different principles. Peterson discloses lowering a stopper 50 until a valve head 54 seats against top surface 78 of a flange 80 for a housing 12. Once seated, the stopper 50 cannot be lowered further downwards and is released only through pulling upwards. In contrast, Downey operates through pressing the push-activated valve downwards to both close and open a drain. Applicant therefore respectfully submits that the mere fact Peterson and Downey are in the same field of endeavor is not a sufficient reason to justify the combination because it does not adequately explain why it would be obvious to one of ordinary skill in the art to incorporate a push only device into a push/pull device.

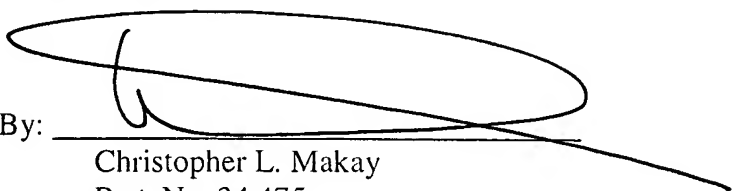
Applicant accordingly respectfully submits claim 1 as amended, claims 15-18, and claim 32 as amended are patentable over the combination of Peterson in view of Downey on the basis the Examiner has failed to set forth a prima facie case that the claims are obvious.

In view of the foregoing, Applicant respectfully requests reconsideration of the rejected claims and earnestly solicits early allowance of the referenced application.

Respectfully submitted,

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